DOCKET FILE COPY ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review	)	IB Docket No. 98-118
Review of International Common Carrier	)	
Regulations	)	

COMMENTS OF CABLE & WIRELESS

Anne Johnston
Larry Berent
CABLE & WIRELESS, PLC
124 Theobalds Road
London WC1X 8RX
England, U.K.

Rachel J. Rothstein
Paul W. Kenefick
CABLE & WIRELESS, INC.
8219 Leesburg Pike
Vienna, VA 22182
U.S.A.

August 13, 1998

TABLE OF CONTENTS

SUMMARY

Cable & Wireless, plc ("C&W plc") and Cable & Wireless, Inc. ("CWI") (collectively referred to as "C&W") submit the following comments which generally support the Commission's deregulatory and streamlining suggestions in this Notice of Proposed Rulemaking ("NPRM"). C&W supports the Commission's proposals to grant blanket 214 licenses (including facilities-based authorizations), and to permit subsidiary corporations to use the licenses of parent corporations. C&W suggests the Commission consider amending its rules to authorize ISR on routes for subsets of services, and to discourage frivolous filings in international licensing proceedings. Also, C&W requests the Commission reexamine and/or clarify its rule governing affiliations with foreign carriers in order to create a rule which better reflects present market conditions.

However, C&W is strongly opposed to the proposed codification of a rule which relies on the settlement rate benchmarks devised by the Commission last year. C&W firmly believes that the Commission does not have jurisdiction over the settlement rates charged by foreign companies and has acted beyond its authority in establishing the prices that U.S. carriers pay to non-FCC-regulated suppliers. In addition, C&W has argued that the ruling was contrary to reasoned decision-making because the FCC mandated purportedly cost-related foreign rates in the absence of any cost data and contrary record evidence. C&W plc is a well recognized opponent of these settlement rate benchmarks and is currently the lead appellant to this rule in a case pending before the U.S. Court of Appeals for the District of Columbia Circuit.

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of	)	
	)	
1998 Biennial Regulatory Review	)	IB Docket No. 98-118
Review of International Common Carrier	)	
Regulations	)	

COMMENTS OF CABLE & WIRELESS

Cable & Wireless, plc ("C&W plc") and Cable & Wireless, Inc. ("CWI") (collectively referred to as "C&W") hereby submit the following comments to the above entitled Notice of Proposed Rulemaking ("NPRM"). C&W applauds the Commission's efforts to streamline the regulatory burden placed on international common carriers and is generally supportive of the NPRM's suggested deregulatory measures. These comments also suggest improvements to the proposed rule changes which will further the deregulatory impact on participants in the international telecommunications market.

However, C&W strongly requests the Commission forbear from its proposed codification of the benchmark condition and revisit its standard for affiliation as applied with this condition. Codification of proposed Section 63.22(f) would not change the condition's effect, but it should not occur unless its enabling Report & Order withstands appellate scrutiny. Further, while the Commission stated it would not substantively amend the definition of affiliation in the NPRM, it should take this opportunity to reexamine its applicability to rules enacted subsequent to its codification.

I. C&W SUPPORTS MANY OF THE COMMISSION'S DEREGULATORY EFFORTS OUTLINED IN THE NPRM.

C&W is generally supportive of the Commission's deregulatory goals in the NPRM. C&W supports the proposal to grant blanket 214 authority (both resale and facilities-based),[1] to eliminate pro forma transfers of control of international licenses,[2] to eliminate the need to apply for separate Section 214 and cable landing licenses to the same destination,[3] to authorize ISR by declaratory ruling,[4] and to eliminate notification of less than 25% shareholder interests.[5] These measures will provide much needed regulatory relief, increase competition, and, where necessary, accurately reflect congressional intent in enacting Section 10 of the Act.

C&W suggests the Commission make improvements to several of its deregulatory measures and consider additional proposals. The Commission should expand its blanket 214 authorization to include facilities based licenses for applicants without affiliates, with affiliates who have been held nondominant, and affiliates who can be proven to be nondominant. The proposal to allow wholly owned subsidiaries to use the licenses of parent corporations should be expanded to include all affiliates with the same corporate structure and foreign carrier affiliations. Finally, the Commission's ISR rules should be made more flexible to permit equivalency findings for subsets of services, an updated compilation of Part 63 of the Commission's rules should be released whenever amended,

---

[1] NPRM at ¶7.
[2] Id. at 12
[3] Id. at 29.
[4] Id. at 41.
[5] NPRM at 39.

and the International Bureau should commit to discouraging frivolous filings in its proceedings.

A. THE BLANKET 214 AUTHORIZATION PROPOSAL SHOULD BE EXPANDED TO INCLUDE FACILITIES BASED APPLICANTS AND CERTAIN AFFILIATED ROUTES.

In Section III. A. of the NPRM, the Commission discusses its blanket 214 authorization proposal. Blanket authorizations would be granted to carriers for the provision of international telecommunications service on unaffiliated routes. The Commission seeks comment on whether this scope should be limited to resale, whether the facilities-based authorizations should be included, and whether it could be expanded to include affiliated routes where the affiliate has already been held nondominant and/or offers exclusively resale services or wireless services.

C&W has consistently maintained its position that licensing barriers and application denials are not the best means to preventing anti-competitive behavior in the international telecommunications market. In implementing the World Trade Organization's Global Basic Telecommunications Agreement, the Commission recognized the benefits of competition in this market. Increased competition among similarly situated carriers, not regulatory barriers to entry, will lower costs and increase quality in this market. The Commission should rely on its ability to condition and/or revoke licenses as a means to regulate behavior which has been proven to be anticompetitive, rather than by raising entry barriers which prematurely regulate based on theoretical market behavior often presented by parties attempting to advance their own private interests.

The Commission should build on this policy of open entry demonstrated in the Foreign Participation Order[6] and finalize many of the provisions in Section III. A. of the NPRM by granting these authorizations for both resale and facilities-based authority. If blanket authorization is justified for resale, then there is no sound regulatory or fair trade policy reason for precluding facilities-based authorization as well. While resale provides an effective means of entry for new carriers, facilities-based services provide the most significant competitive effect on costs and quality. Further, the Commission should allow for blanket authority to those affiliated routes where the carrier has been held nondominant, and where the affiliate offers exclusively resale or wireless services. Also, an applicant should be able to receive authority through these blanket authorizations on affiliated routes where it has a demonstrable, insignificant market share but has yet to be held nondominant. As with unaffiliated routes, the carrier would be unable to leverage any foreseeable market power on these types of affiliated routes which could have a possible anticompetitive impact on either U.S. carriers or consumers. These broad, blanket 214 authorizations would increase competition in the international telecommunications market while maintaining the Commission's ability to condition or revoke licenses if evidence of anticompetitive behavior has been proven.

B. THE PROVISION OF SERVICE FOR WHOLLY OWNED SUBSIDIARIES SHOULD BE EXPANDED.

In Paragraph 22 of the NPRM, the Commission proposes to amend Section 63.21 of its rules to provide that an international Section 214 authorization effectively

[6] In the Matter of Rules and Policies on Foreign Participation in the U.S. International Telecommunications Market ("Foreign Participation Order"), IB Docket No. 97-142, released Nov. 26, 1997.

authorizes a carrier to provide service through its wholly owned subsidies. This would allow an international carrier which operates through several wholly owned subsidiaries to require only one Section 214 authorization to cover all of those subsidiaries. While acknowledging the deregulatory benefits of such a policy, the Commission expresses a concern that this not be used to circumvent regulations which safeguard against anticompetitive conduct by dominant carriers.

C&W supports the Commission's proposal and suggests the rules be broadened to allow parent companies and affiliates who operate under the same corporate structure and have the same foreign carrier affiliates as the subsidiary to use the subsidiary's 214 authorization. A rule amended in this manner would allow any corporate entity to base its authorization on the 214 licenses of another entity as long as the corporate structure and foreign affiliations were identical. The applicant would provide the Orders it was relying upon in a notification letter and would receive separate authorizations from the Commission. This would eliminate many redundant filings as well as decrease the number of applications pending before the Commission as the International Bureau strives to meet its self-imposed 90 day deadline for applications which do not raise questions of extraordinary complexity.[7]

For example, CWI has acquired numerous international Section 214 authorizations to provide service on many routes, including several where it is held dominant due to the market power of its affiliate operating in the destination market. CWI is wholly owned by C&W plc which in turn wholly owns several different corporations which may be interested in providing international service from the United States. Since these other corporations have the same ultimate ownership through C&W

plc and the same foreign carrier affiliations as CWI, these corporations should have the ability to receive authorization based upon CWI's authorizations without applying for separate 214 licenses. The affiliated companies would notify the Commission which licenses were to be used, including a certification as to their identical affiliations and corporate structure, and the Commission could provide a separate authorization to this licensee by simply grant stamping the notification letter in order to streamline the approval process.

C. ISR EQUIVALENCY RULES SHOULD BE AMENDED TO RECOGNIZE SUBSETS OF SERVICES.

In paragraph 41 of the NPRM, the Commission proposes to add new Section 63.16 which would permit switched services over international private lines interconnected to the public switched network, commonly referred to as International Simple Resale ("ISR"), by declaratory ruling rather than 214 application. This would streamline the process and move the process away from the carrier-specific information currently required under Section 63.18.

C&W fully supports the Commission's proposal and requests the Commission take this opportunity to recognize other opportunities for expanding ISR routes. As demonstrated in two recent applications by Hong Kong Telecommunications Pacific,[8] ISR equivalency can be demonstrated for subsets of services as well as switched voice services. These services are defined as virtual private networks and non-telephonic services which do not allow users to conduct two-way, real time voice communications,

---

[7] Id. at ¶328.

including facsimile and data services. Foreign administrations do not always open their markets for all types of services at once, and the Commission's rules, if feasible, should provide the flexibility to recognize these deviations. ISR provides a significant incentive for foreign carriers and administrations to adopt more market orientated policies which result in better services for U.S. carriers and consumers. Increased regulatory flexibility in this area would more accurately reflect these market conditions by permitting ISR in subsets of services, thus opening new markets to increased competition.

D. THE COMMISSION SHOULD RELEASE AN UPDATED COMPILATION OF ITS RULES.

If finalized as proposed, this NPRM will make several changes to Title 47, Part 63 of the Code of Federal Regulations ("CFR"). When combined with the changes which were made by the International Settlement Rates Order,[9] the Foreign Participation Order, and possible changes to be made by the ISP NPRM which was announced at the Commission's August 6, 1998 Open Commission Meeting,[10] the Commission should consider publishing an amended version of Part 63 of its rules. Rather than simply dictating where the rules are to be changed, the amended version of Part 63 could be published at the end of the Order finalizing this or the ISP NPRM. If this is not feasible, then a Public Notice which provides the updated version of Part 63 could be released. Publication of an updated version of the rules could be available on the FCC world wide web site, providing practitioners an accurate source for rules affecting international

---

[8] See Application of Hong Kong Telecommunications (Pacific) Limited, File No. ITC-97-138, filed March 3, 1997; Application of Hong Kong Telecommunications (Pacific) Limited, File No. ITC-98-196, filed March 4, 1998.

[9] International Settlement Rates, Report and Order ("Benchmark Order"), 12 FCC Rcd 19,806 (1997), recon. and appeal pending.

common carriers and the Commission an opportunity to hear comments concerning non-substantial, typographical errors prior to publication in the CFR.

E. THE COMMISSION MUST ADDRESS FRIVOLOUS PLEADINGS IN INTERNATIONAL LICENSE PROCEEDINGS.

The Commission should use this proceeding to address the problem of frivolous filings in international proceedings. C&W suggests the Commission include in its amended Part 63 rules a section similar to Section 1.52 of the Commission's rules which specifically addresses frivolous filings for authority brought before the International Bureau. The elimination of redundant filings, as suggested in Part I. B. of these comments, coupled with strong enforcement and prevention of frivolous filings would assist the Commission in streamlining its approval process and meeting its 90 day self-imposed deadline for licensing approvals.[11]

In February 1996, the Commission released a Public Notice which reminded parties of the rules prohibiting the filing of frivolous claims and that the Commission intended to discourage such filings in the future.[12] The Commission defines a frivolous complaint as one which is "...filed without any effort to ascertain or review the underlying facts" or "...based on arguments that have been specifically rejected by the Commission...or [having] no plausible basis for relief."[13] It is this second element, where the Commission has repeatedly, specifically rejected certain arguments, which must be addressed by the International Bureau. Often, Petitions to Deny applications for

---

[10] In the Matter of 1998 Biennial Regulatory Review – Reform of the International Settlements Policy and Associated Filing Requirements ("ISP NPRM"), IB Docket No. 98-148, released August 6, 1998.

[11] See Foreign Participation Order, supra note 6.

[12] Commission Taking Tough Measures Against Frivolous Pleadings, 11 FCC Rcd 3030 (1996).

international authority are filed based on arguments that have been specifically rejected by the Commission with the apparent intention of removing the application from streamlined review. The practice of filing to obstruct or delay is a widespread practice which has been recognized by the International Bureau, international carriers, and Members of Congress.[14]

C&W, therefore, requests the Commission include a section, similar to Section 1.52 of the Commission's rules, in Part 63 and commit the International Bureau to swift and thorough enforcement of this rule. Remedies for a willful violation of this section could include removal of the petition from the proceeding and/or disciplinary action against the attorney of record pursuant to Section 1.24 of the Commission's rules. By removing and discouraging frivolous filings, the Commission streamlines the international authority process for all interested parties.

II. THE COMMISSION SHOULD REEXAMINE THE DEFINITION AND SCOPE OF ITS AFFILIATION STANDARD.

In Paragraph 39 of the NPRM, the Commission discusses its proposed changes to when a U.S. carrier must notify the Commission of any changes in non-controlling interests, and in Paragraph 40 the Commission notes it is not changing its standard for affiliation. This standard for when a U.S. carrier is affiliated with a foreign carrier was created in the Commission's Market Entry Order[15] and is presently codified in Section 63.18(h)(1)(i)(A) & (B).

---

[13] Id., citing Cable Television Consumer Protection Act, 9 FCC Rcd 2642, 2657 (1993).

[14] See Letter from Representative Michael G. Oxley, Member of Congress, to The Honorable William E. Kennard, Chairman, Federal Communications Commission (May 4, 1998)(Attached as Exhibit One).

[15] In the Matter of Market Entry and Regulation of Foreign – affiliated Entities ("Market Entry Order"), IB Docket No. 95-22, released Nov. 30, 1995.

The Commission should take this opportunity to address the affiliation standard as it applies to the benchmark settlement rate rules. The affiliation standard was finalized in 1995 in the Commission's Market Entry Order in order to determine when rules preventing anticompetitive practices through the exercise of market power should be applied,[16] whereas the Benchmark Order, which was finalized in 1997, addresses the issue of foreign carrier settlement rates. In the latter Order, the Commission demonstrated an understanding of the importance of settlement rates and the level of revenue they bring to many foreign carriers, yet its use of the twenty-five percent affiliation standard does not reconcile with this policy. If, as the Commission has previously stated, foreign carriers are arguably charging settlement rates which are many times cost and are using this excess to subsidize local phone service, profits, etc., then the Commission must recognize that a minority interest in the foreign carrier cannot successfully demand this important source of revenue be lowered to a benchmark settlement rate which often is a fraction of the current rate.

Further, many nations are in the infantile stages of competition and have only recently allowed foreign investment in international telecommunications carriers. Often, these nations will not permit majority control and/or will maintain veto power over decisions affecting, *inter alia*, international settlement rates. The U.S. carrier may be permitted to invest to a level which creates an "affiliation" but which does not amount to majority control or decision making authority in the foreign carrier. Thus, a U.S. carrier with a non-controlling, "affiliation" in a foreign carrier may be precluded from exercising its facilities-based authority on the route due to settlement rate levels, but it does not have the requisite equity interest in the foreign carrier to demand these rates be lowered. This

[16] Id. at ¶¶73-98.

creates a regulatory atmosphere where U.S. carriers will not invest in foreign carriers, depriving these entities of the needed capital to modernize, lower costs, become competitive, and eventually enact accounting rates agreements which may be comparable to the Commission's benchmarks. When presented with this scenario, U.S. carriers are more inclined to avoid such an investment and continue to settle their traffic with the incumbent carrier. Ironically, this perpetuates the system which the Commission intends to change.

In the alternative, C&W urges the Commission to use this rulemaking as an opportunity to clarify its affiliation standard through an amendment to the rules or an official example of its application in the Code of Federal Regulations. The Commission should clearly distinguish its affiliation standard for status purposes codified at Section 63.18(h)(1)(i)(A) of the Commission's rules and affiliation for ECO test purposes which is codified at Section 63.18(h)(1)(i)(B). Many in the international telecommunications field as well as International Bureau staff members have recognized and acknowledged the affiliation rules are confusing and difficult to apply in certain circumstances. Interested parties and the Commission would benefit from a clarification and/or official example of the affiliation rules.

III. THE BENCHMARK SETTLEMENT RATE CONDITION SHOULD NOT BE CODIFIED.

In paragraph 37 of the NPRM, the Commission proposes to include in the new Section 63.22(f) a provision codifying the benchmark settlement rate condition that was

adopted in the Benchmark Order.[17] The provision created a condition where a carrier would be unable to exercise its facilities-based authority on an affiliated route unless the affiliate in the international point offered all U.S. carriers settlement rates at or below the Commission's relevant benchmark for that market.[18] The Commission concluded in the NPRM that codification of this requirement would serve to clarify carriers' general obligation to include that already-existing obligation in proposed Section 63.22(f) of the Commission's rules.

C&W opposes this codification of the benchmark settlement rate condition. C&W is on the record in the comments, reply comments, and as lead appellant in the appeal to this rulemaking strongly opposing the policy and authority by which the Commission based its benchmark settlement rates and applicable conditions. C&W, along with many other parties, strongly opposed the adoption of this policy in the FCC's rulemaking. C&W firmly believes that the Commission does not have jurisdiction over the settlement rates charged by foreign companies and has acted beyond its authority in establishing the prices that U.S. carriers pay to non-FCC-regulated suppliers. In addition, C&W has argued that the ruling was contrary to reasoned decision-making because the FCC mandated purportedly cost-related foreign rates in the absence of any cost data and contrary record evidence.[19]

The Commission recognized the consequences of the settlement rate condition when it stayed the condition on authorizations received prior to January 1, 1998.[20] While this condition applied retroactively, and the condition for which codification is proposed

---

[17] Benchmark Order, supra, note 9.
[18] Id. at ¶¶195-231.
[19] Joint Petitioners' Brief at 1, Cable & Wireless PLC v. FCC, No. 97-1612 and consolidated cases (D.C. Cir. filed June 17, 1998).

would be applied to future licenses, the issues are the same. The Commission recognized the merit of MCI's Petition for Clarification and Reconsideration requesting the retroactive condition on licenses obtained prior to January 1, 1998 be limited to those routes where the U.S. carrier and foreign carrier affiliate handle greater than 25 percent of the total inbound or outbound traffic on the route and where there is control of bottleneck facilities. The petitioner also stated this modification of the condition should apply equally to existing and future Section 214 authorization holders. The Commission stayed the retroactive condition based on the issues and scenarios discussed in Petition.

C&W requests the Commission forbear from codifying this condition until the appeal before the U.S. Court of Appeals and the Petitions for Reconsideration have been concluded. Many interested parties have raised significant issues with this condition and the Commission has recognized several of these issues in its March 30, 1998 Order. While codification of this condition does not affect its applicability or legality, it will give the impression that all issues concerning the condition have been resolved. Codification should not occur unless or until the Benchmark Order withstands appellate and reconsideration scrutiny.

In the alternative, the Commission should clarify the language proposed for Section 63.22(f) to ensure this condition does not affect resellers and nondominant carriers. First, in the proposed section, the Commission should include the phrase "...on a facilities-basis" after "U.S. international switched traffic" in order to clarify this condition exclusively affects facilities-based carriers on both ends of the route. A resale carrier, on either end, would not be a party to the settlement rate arrangement and would be unable to meet this condition. Second, due to the Commission's release of the ISP

---

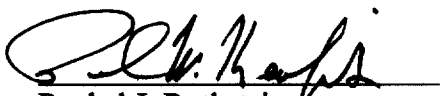
[20] See In the Matter of International Settlement Rates, Order Staying Condition, released March 30, 1998.

NPRM which acknowledges the possible anticompetitive effects of the international settlements policy and its filing requirements, the Commission should consider amending Section 63.22(f) to exclude nondominant carriers as well.

IV. CONCLUSION

C&W applauds the Commission's efforts to streamline its rules and lessen the regulatory burden which is currently placed on international common carriers. As articulated in these comments, C&W agrees with most of the Commission's proposals in the NPRM, but strongly, yet respectfully, disagrees with several others. C&W requests the Commission consider the comments submitted in this proceeding and balance its obligation as a regulatory agency with an understanding of the regulatory burden being placed on international common carriers.

Respectfully Submitted,



Anne Johnston
Larry Berent
CABLE & WIRELESS, PLC
124 Theobalds Road
London WC1X 8RX
England, U.K.

By: Rachel J. Rothstein
Paul W. Kenefick
CABLE & WIRELESS, INC.
8219 Leesburg Pike
Vienna, VA 22182
U.S.A.
Phone: 703-905-5785

August 13, 1998

CERTIFICATE OF SERVICE

I, Heather Cole, hereby certify that I have caused copies of the foregoing "Comments of Cable & Wireless" to be served this 13th day of August 1998, by first class mail, postage prepaid to the following:

Heather K. Cole
Heather Cole

Regina M. Keeney
Chief, International Bureau
Federal Communications Commission
Room Number 800, Stop Code 0800
2000 M Street, NW
Washington, D.C. 20554

Diane J. Cornell
Chief, Telecommunications Division
International Bureau
Federal Communications Commission
Room Number 800, Stop Code 0800A
2000 M Street, NW
Washington, D.C. 20554

Douglas Klein
International Bureau
Federal Communications Commission
Suite 800
2000 M Street, N.W.
Washington, DC 20554

International Transcription Services, Inc.
1231 20th Street, N.W.
Washington, D.C. 20036

Deputy Assistant Secretary of
Defense (Telecommunications)
Office of the Assistant Secretary
of Defense
Pentagon, Room 3E160
Washington, D.C. 20401

Vernon McConnell - W36
Director
National Security Agency
Fort George G. Meade, MD. 20755

Earl Barbely
Office of International Communications
Policy
Department of State
21st and C Streets, NW - # 5824
Washington, D.C. 20520

Carl Wayne Smith, Esq.
Acting Chief Regulatory Counsel
Defense Communications Agency
Washington, D.C. 20305-2000
Attention: Code 115

The Hon. Clarence Irving
Assistant Secretary of Commerce
National Telecommunications and
Information Agency
14th & Constitution Ave., NW
Room H 4717
Washington, D.C. 20320

Exhibit One

MICHAEL G. OXLEY
4TH DISTRICT, OHIO

2233 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-3504
(202) 225-2676

COMMITTEE ON COMMERCE

SUBCOMMITTEE ON FINANCE AND HAZARDOUS MATERIALS
CHAIRMAN

SUBCOMMITTEE ON TELECOMMUNICATIONS, TRADE AND CONSUMER PROTECTION
VICE CHAIRMAN

DISTRICT OFFICES:
3121 WEST ELM PLAZA
LIMA, OH 45805
(419) 999-5455

100 EAST MAIN CROSS
FINDLAY, OH 45840
(419) 423-3519

24 WEST THIRD STREET
ROOM 214
MANSFIELD, OH 44902
(419) 522-3767

TOLL-FREE IN OHIO:
1-800-472-4154

Congress of the United States
House of Representatives
Washington, DC 20515-3504

May 4, 1998

The Honorable William E. Kennard
Chairman
Federal Communications Committee
1919 M Street
Washington, DC 20554

Dear Chairman Kennard:

With the understanding that the Commission is in the process of reviewing its regulations in an effort remove unnecessary regulatory burdens, in accordance with Section 11 of the Telecommunications Act of 1996, I wanted to take this opportunity to offer some thoughts on the process. Let me begin by thanking the Commission for the reforms already completed through these review efforts. However, as the Commission continues to work to streamline and deregulate the telecommunications industry, I would encourage a comprehensive approach designed to remove as many regulatory burdens as possible. This is an important common-sense effort and I am pleased that the Commission is working to fully implement the intent of Congress.

As you know, the historic World Trade Organization (WTO) Basic Telecommunications Agreement committed 69 nations to opening their markets for basic telecommunications services. In an effort to implement this agreement with the November 25, 1997 *Report and Order on Reconsideration* on Rules and Policies on Foreign Participation in the U.S. Telecommunications Market (IB Docket No. 97-142) and Market Entry and Regulation of Foreign-Affiliated Entities (IB Docket No. 95-22), the Commission adopted an open entry policy for applications to land and operate submarine cables from WTO member countries in the United States. In adopting this policy, the Commission made the well-reasoned decision to continue to consult with the State Department to determine if there was a compelling national security interest that would necessitate disapproving specific submarine cable landing licenses. Additionally, and most significant for the purposes of this correspondence, the Commission decided to no longer impose foreign ownership restrictions on cable landing stations.

As you well know, I have long been an advocate of free and fair trade in the international telecommunications marketplace and was a strong supporter of the WTO agreement. With this in mind, I would encourage the Commission to use the regulatory reform efforts underway to further remove barriers to foreign-owned submarine cable landing licenses. It is my belief that one of the goals of the review process should be to expedite the review process involved in considering landing license applications. Additionally, I do not believe that the Commission should adopt additional conditions on those licenses without an overwhelmingly compelling reason.

Further, the Commission should review the international reporting requirements in place to determine if they are redundant in nature. Currently, foreign-affiliated U.S. carriers are required to file numerous quarterly, semi-annual and annual reports which often contain very similar information. These reports are

both time-consuming and burdensome and may not provide the Commission with useful information. As we implement the WTO agreement, it would seem to make sense to consider eliminating some of these requirements.

As a last suggestion, the Commission may want to review how the regulatory process is sometimes used in an anti-competitive manner. It is my understanding that carriers often file frivolous pleadings simply to delay the licensing process. Because the current rules require non-streamlined treatment for any opposition to an application, applicants will often be forced to wait six months or more for the review process to be completed, regardless of the merits of the opposition. A change in the rules to allow contested applications to be granted by Public Notice when oppositions are unsubstantiated, rather than by Order, would allow new competitors timely access to the U.S. market.

These efforts to ease regulatory obstacles would reflect our commitment to opening our markets and would again signal our commitment to the international community that we believe in the value of free trade. Last fall's decision to remove the foreign ownership element from the approval process was a tremendous first step in this regard. I am hopeful that the Commission will use this regulatory review process to build upon this momentum.

Thank you for considering these thoughts. I look forward to hearing from you on this issue in the near future.

Very truly,

Michael G. Oxley, M.C.
Fourth Ohio District

cc: Commissioner Harold Furchtgott-Roth
Commissioner Susan Ness
Commissioner Michael Powell
Commissioner Gloria Tristani
Kathryn Dole, Deputy Director, Office of Legislative and Intergovernmental Affairs

MGO/AN